

Department of Veterans Affairs

§ 3.383

(c) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service.

(d) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.

(e) The following principles apply to dental conditions noted at entry and treated during service:

(1) Teeth noted as normal at entry will be service-connected if they were filled or extracted after 180 days or more of active service.

(2) Teeth noted as filled at entry will be service-connected if they were extracted, or if the existing filling was replaced, after 180 days or more of active service.

(3) Teeth noted as carious but restorable at entry will not be service-connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service-connected.

(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service-connected if extraction was required after 180 days or more of active service.

(5) Teeth noted at entry as non-restorable will not be service-connected, regardless of treatment during service.

(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.

(f) The following will not be considered service-connected for treatment purposes:

(1) Calculus;

(2) Acute periodontal disease;

(3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and

(4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.

(g) Teeth extracted because of chronic periodontal disease will be service-connected only if they were extracted after 180 days or more of active service.

(Authority: 38 U.S.C. 1712)

[64 FR 30393, June 8, 1999, as amended at 77 FR 4470, Jan. 30, 2012]

§ 3.382 [Reserved]

§ 3.383 Special consideration for paired organs and extremities.

(a) *Entitlement criteria.* Compensation is payable for the combinations of service-connected and nonservice-connected disabilities specified in paragraphs (a)(1) through (a)(5) of this section as if both disabilities were service-connected, provided the nonservice-connected disability is not the result of the veteran's own willful misconduct.

(1) Impairment of vision in one eye as a result of service-connected disability and impairment of vision in the other eye as a result of non-service-connected disability and

(i) The impairment of vision in each eye is rated at a visual acuity of 20/200 or less; or

(ii) The peripheral field of vision for each eye is 20 degrees or less.

(2) Loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of nonservice-connected disability.

(3) Hearing impairment in one ear compensable to a degree of 10 percent or more as a result of service-connected disability and hearing impairment as a result of nonservice-connected disability that meets the provisions of § 3.385 in the other ear.

(4) Loss or loss of use of one hand or one foot as a result of service-connected disability and loss or loss of use of the other hand or foot as a result of nonservice-connected disability.

(5) Permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.

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(b) *Effect of judgment or settlement.* (1) If a veteran receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the nonservice-connected disability which established entitlement under this section, the increased compensation payable by reason of this section shall not be paid for any month following the month in which any such money or property is received until such time as the total amount of such increased compensation that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received. The provisions of this paragraph do not apply, however, to any portion of such increased compensation payable for any period preceding the end of the month in which such money or property of value was received.

(2) With respect to the disability combinations specified in paragraphs (a)(1), (a)(2), (a)(3) and (a)(5) of this section, the provisions of this paragraph apply only to awards of increased compensation made on or after October 28, 1986.

(c) *Social security and workers' compensation.* Benefits received under social security or workers' compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) *Veteran's duty to report.* Any person entitled to increased compensation under this section shall promptly report to VA the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the nonservice-connected loss or loss of use of the impaired extremity upon which entitlement under this section is based. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorneys' fees, may not be deducted from the amount to be reported.

(Authority: 38 U.S.C. 501(a), 1160)

38 CFR Ch. I (7–1–16 Edition)

CROSS REFERENCES: § 3.385 Disability due to impaired hearing; § 4.85 Evaluation of hearing impairment.

[53 FR 23236, June 21, 1988, as amended at 69 FR 48149, Aug. 9, 2004; 74 FR 11483, Mar. 18, 2009]

§ 3.384 Psychosis.

For purposes of this part, the term “psychosis” means any of the following disorders listed in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) (see § 4.125 for availability information):

- (a) Brief Psychotic Disorder;
- (b) Delusional Disorder;
- (c) Psychotic Disorder Due to Another Medical Condition;
- (d) Other Specified Schizophrenia Spectrum and Other Psychotic Disorder;
- (e) Schizoaffective Disorder;
- (f) Schizophrenia;
- (g) Schizophreniform Disorder; and
- (h) Substance/Medication-Induced Psychotic Disorder.

(Authority: 38 U.S.C. 501(a), 1101, 1112(a) and (b))

[79 FR 45099, Aug. 4, 2014]

§ 3.385 Disability due to impaired hearing.

For the purposes of applying the laws administered by VA, impaired hearing will be considered to be a disability when the auditory threshold in any of the frequencies 500, 1000, 2000, 3000, 4000 Hertz is 40 decibels or greater; or when the auditory thresholds for at least three of the frequencies 500, 1000, 2000, 3000, or 4000 Hertz are 26 decibels or greater; or when speech recognition scores using the Maryland CNC Test are less than 94 percent.

[59 FR 60560, Nov. 25, 1994]

EFFECTIVE DATES

§ 3.400 General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of